IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2007

CORAM

THE HONOURABLE MR. JUSTICE K. MOHAN RAM

CRIMINAL ORIGINAL PETITION NO.32475 OF 2007
AND
M.P.NOS.1 AND 2 OF 2007

Amar Kumar Mahadevan ... Petitioner(Accused)

Vs.

Karthiyayini ... Respondent(Complainant)

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for the records in S.T.C.No.1607 of 2007 on the file of the learned Judicial Magistrate No.VI, Coimbatore and quash the proceedings.

For Petitioner : Mr. C.S. Dhanasekaran

****

O R D E R

The petitioner herein is the respondent in STC.No.1607 of 2007 on the file of the learned Judicial Magistrate No.VI, Coimbatore. The respondent herein is the wife of the petitioner. The respondent filed an application under Section 12 of the The Protection of Women from Domestic Violence Act, 2005 (hereinafter referred to as the "Act") making certain allegations against the petitioner herein. The said application seems to have been filed on 25.7.2007 and on the same date, the sworn statement has been recorded. The learned Magistrate being satisfied that a prima facie case has been made out, has taken the application on file under Section 12 of the Act and posted the application to 30.7.2007, directed the issue of summons to the accused/petitioner herein and also private notice to the petitioner herein. The petitioner has filed the above criminal original petition under Section 482 of Cr.P.C. seeking to quash the proceedings in STC.No.1607 of 2007.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

2. The contention of the petitioner is that the sworn statement of the respondent herein was recorded only on 25.7.2007 and the hearing was adjourned to 30.7.2007 in gross violation of the mandatory provisions of Section 12(4) of the Act. It is further contended that the service of notice of the date of hearing fixed under Section 12 of the Act is not in accordance with the procedure prescribed under Section 13(1) of the Act namely, the notice was not served by the Protection Officer and private notice has been permitted. Further, a declaration of service of notice made by the Protection Officer has not so far been filed as per the provisions contained under Section 13(2) of the Act.

3. The learned counsel for the petitioner further contended that the learned Magistrate erred in taking cognizance of the application filed by the respondent herein without calling for the report from the Protection Officer.

4. Heard Mr. C.S. Dhanasekaran, learned counsel for the petitioner.

5. The learned counsel for the petitioner while reiterating the above said contentions put forth in the petition submitted that the proceedings pending on the file of the learned Magistrate are liable to be quashed for not following the mandatory provisions contained in the Act.

6. Before considering the above said contentions put forth by the petitioner, it is necessary to refer the relevant provisions of the Act. Sections 12 and 13 of the Act read as follows:-

> "12. Application to Magistrate- (1) An aggrieved person or a Protection Officer or any other person on behalf of the aggrieved person may present an application to the Magistrate seeking one or more reliefs under this Act:
>
> Provided that before passing any order on such application, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer or the service provider.
> (2) The relief sought for under sub-section (1) may include a relief for issuance of an order for payment of compensation or damages without prejudice to the right of such person to institute a suit for compensation or damages for the injuries caused by the acts of domestic violence committed by the respondent:

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Provided that where a decree for any amount as compensation or damages has been passed by any Court in favour of the aggrieved person, the amount, if any, paid or payable in pursuance of the order made by the Magistrate under this Act shall be set off against the amount payable under such decree and the decree shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (5 of 1908), or any other law for the time being in force, be executable for the balance amount if any, left after such set off.

(3) Every application under sub-section (1) shall be in such form and contain such particulars as may be prescribed or as nearly as possible thereto.

(4) The Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court.

(5) The Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing.

13. Service of notice- (1) A notice of the date of hearing fixed under section 12 shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt.

(2) A declaration of service of notice made by the Protection Officer in such form as may be prescribed shall be the proof that such notice was served upon the respondent and on any other person as directed by the Magistrate unless the contrary is proved."

WEB COPY

7. Before making an endeavour to ascertain the purport and scope of the provisions contained in Sections 12 and 13 of the Act, it will be useful to refer to the objects in enacting the above said Act. The statement of objects and reasons reads as follows:-

"Statement of Objects and Reasons.- Domestic violence is undoubtedly a human rights issue and serious deterrent to development. The Vienna Accord of 1994 and the Beijing Declaration and the

https://hcservices.ecourts.gov.in/hcservices/

Platform for Action (1995) have acknowledged this. The United Nations Committee on Convention on Elimination of All forms of Discrimination Against Women (CEDAW) in its General Recommendation No.XII (1989) has recommended that State parties should act to protect women against violence of any kind especially that occurring within the family.

2. The phenomenon of domestic violence is widely prevalent but has remained largely invisible in the public domain. Presently, where a women is subjected to cruelly by her husband or his relatives, it is an offence under section 498-A of the Indian Penal Code. The civil law does not however address this phenomenon in its entirety.

3. It is, therefore, proposed to enact a law keeping in view the rights guaranteed under articles 14, 15 and 21 of the Constitution to provide for a remedy under the civil law which is intended to protect the woman from being victims of domestic violence and to prevent the occurrence of domestic violence in the society."

8. In construing the provisions of the Act, the Court has to bear in mind that it is a beneficent piece of social welfare legislation aimed at promoting and securing the well-being of the aggrieved persons and the Court will not adopt a narrow interpretation which will have the effect of defeating the very object and purpose of the Act. It must be interpreted in the spirit in which the same have been enacted accompanied by an anxiety to ensure that the protection is not nullified by the backward looking interpretation which serves to defeat the provision rather than to fulfil its life-aim.

9. Keeping the above said principles in mind, if the provisions contained in Sections 12 and 13 of the Act are considered with reference to the contentions put forth by the learned counsel for the petitioner, this Court without any hesitation comes to a conclusion that the said contentions put forth by the counsel for the petitioner have to be rejected at a threshold. A reading of Section 12(4) of the Act shows that the Magistrate shall fix the first date of hearing, which shall not ordinarily be beyond three days from the date of receipt of the application by the Court. Section 12(5) of the Act stipulates that the Magistrate shall endeavour to dispose of every application made under sub-section (1) within a period of sixty days from the date of its first hearing. Since the Act provides for the disposal of the application filed by the aggrieved person in a time bound manner, to achieve that object, certain enabling provisions have

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

been incorporated under Section 13 of the Act. Section 13 of the Act provides that a notice of the date of hearing fixed under Section 12 of the Act shall be given by the Magistrate to the Protection Officer, who shall get it served by such means as may be prescribed on the respondent, and on any other person, as directed by the Magistrate within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate from the date of its receipt. A declaration of service of notice made by the Protection Officer in the form set out by the Central Government by rules shall be a proof of service of notice. Since as per Section 12(5) of the Act, it is the bounden duty of the Magistrate to make an endeavour to dispose of the application within a period of sixty days from the date of its first hearing, unless the service of notice is completed at the earliest, it may not be possible to dispose of the application within the above said stipulated time. Therefore, Section 13 of the Act provides for service of notice on the respondent through the Protection Officer and such notice shall be served within a maximum period of two days or such further reasonable time as may be allowed by the Magistrate. In this context, it will be useful to refer Section 28 of the Act, which reads as follows:-

> " 28. Procedure- (1) Save as otherwise provided in this Act, all proceedings under Sections 12, 18, 19, 20, 21, 22 and 23 and offences under Section 31 shall be governed by the provisions of the Code of Criminal Procedure, 1973 (2 of 1974).
>
> (2) Nothing in sub-section (1) shall prevent the Court from laying down its own procedure for disposal of an application under Section 12 or under subs-section (2) of Section 23.

10. A reading of the above said provision shows that sub-section 2 envisages that the Court may lay down its own procedure for disposal of an application. Thus, it is clear that apart from following the procedure provided under Sections 12 and 13 of the Act, it is open to the Magistrate to follow its own procedure for disposal of applications filed under this Act.

11. It is seen from the diary extract that the complainant was present on 25.7.2007 and the sworn statement of the respondent had been recorded on the same day and after perusing the records and on being satisfied that a prima facie case has been made, the learned Magistrate has taken the application on file under Section 12 of the Act and posted the application to 30.7.2007. The learned Magistrate has noted that 28th and 29th of July, 2007 happened to be holidays and therefore, has directed to issue summons to the accused (respondent) on payment of process fee and also private notice to the accused (respondent). Thus, it is clear that the

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

learned Magistrate was conscious of the time limit prescribed under Section 12(4) of the Act. On 30.7.2007, the complainant/respondent herein was present but the accused/petitioner was not present and therefore, summons was ordered on 1.8.2007. On 1.8.2007, the complainant/respondent herein was present but the accused/petitioner herein was not present and it had been brought to the notice of the Court that the petitioner is working at Visakapattinam and at the request of the counsel for the respondent herein, notice has been ordered to be issued to the Protection Officer and on the next date of hearing was fixed for 10.8.2007. On 10.8.2007, as the accused/petitioner herein was not present, once again, summons have been directed to be issued to the petitioner and a private notice has also been ordered returnable by 17.8.2007. On 17.8.2007, the respondent herein was present but the petitioner herein was absent. The postal cover had been returned as "unclaimed". Hence, the non bailable warrant was issued against the petitioner herein returnable by 31.8.2007. On 18.8.2007, i.e., the very next day, the petitioner had surrendered before the Court and on a petition filed by him, non bailable warrant had been cancelled and the copies have been given to him and had been questioned.

12. From the above said diary extract, it can be seen that the learned Magistrate has taken every effort to serve the notice on the petitioner and in fact on 1.8.2007, the learned Magistrate has directed the issue of notice to the Protection Officer. It further reveals that on the first date of hearing namely, 25.7.2007 itself private notice has been directed to be issued to the petitioner herein. Such order directing the issue of private notice to the petitioner herein cannot be said to be against the provisions contained in the Act but it can only be taken to be in consonance with Section 28 of the Act, since Section 28 of the Act enables the Magistrate to lay down his own procedure for disposal of the application. By the issue of private notice to the petitioner, it is not understandable as to how the petitioner is prejudiced. If the learned Magistrate had not directed the service of the notice through the Protection Officer, it is the respondent herein who should really be the aggrieved person by non-observance of the provisions contained in Section 12 and Section 13 (1) of the Act.

13. The declaration of service of notice by the Protection Officer shall be the proof that such notice was served upon the respondent as per Section 13(2) of the Act. The absence of such declaration from the Protection Officer has not in any way affected the proceedings pending before the learned Magistrate or it has in any way prejudiced the interest of the petitioner herein. He had admittedly appeared before the learned Magistrate on 18.8.2007. Therefore, the necessity to file a declaration of service of notice by the Protection Officer has not arisen.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

Therefore, the contentions of the learned counsel for the petitioner is liable to be rejected and accordingly rejected.

14. The proviso to Section 12 of the Act provides that before passing any order on the application filed under Section 12 (1) of the Act, the Magistrate shall take into consideration any domestic incident report received by him from the Protection Officer. In this case, admittedly, the Protection order has not so far been passed and it is yet to be passed. The contention of the learned counsel for the petitioner is that the application itself should not have been taken cognizance in the absence of the domestic incident report from the Protection Officer. A reading of Section 12 of the Act does not warrant such an interpretation. Nowhere, it is provided in the Act that even for taking cognizance of the application filed by the aggrieved person, the receipt of the domestic incident report from the Protection Officer is a condition precedent. Therefore, the contention of the learned counsel for the petitioner is untenable and does not merit acceptance.

15. As stated above, this Act being a beneficent piece of legislation enacted for providing minimum relief to an aggrieved person affected by domestic violence, even if there is any minor procedural deviation, such minor procedural deviation being technical in nature, need not be taken serious note off and on that ground, the proceedings pending under the Act cannot be quashed.

17. In the considered view of this Court, the above petition is vexatious in nature and it amounts to clear abuse of process of the Court and hence, the same is liable to be dismissed and accordingly dismissed. Consequently, connected miscellaneous petitions are also dismissed.

Kb

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

TO

1. THE JUDICIAL MAGISTRATE NO. VI,
COIMBATORE.

2. DO THRO' THE CHIEF JUDICIAL MAGISTRATE,
COIMBATORE.

+ 1 CC TO MR. C. S. DHANASEKARAN, ADVOCATE SR NO. 70575

CRL.O.P.NO.32475
OF 2007

JRG(CO)
SR/7.12.2007

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/